

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	)	
<b>On Its Own Motion</b>	)	
	)	
<b>v.</b>	)	
	)	<b>ICC Docket No. 11-0434</b>
<b>Commonwealth Edison</b>	)	
	)	
<b>Investigation of Rate GAP pursuant to</b>	)	
<b>Section 9-250 of the Public Utilities Act.</b>	)	

**IGS ENERGY’S BRIEF ON EXCEPTIONS**

Interstate Gas Supply, Inc. (“IGS Energy”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.830) and the Administrative Law Judge’s March 5, 2012 direction, respectfully submits its Brief on Exceptions to the Proposed Order in the instant proceeding addressing the investigation pursuant to Section 9-250 of the Public Utilities Act (“Act”), 220 ILCS 5/9-250, of Commonwealth Edison Company’s (“ComEd”) Rate GAP.

**Exception No. 1**

**Treatment of “Retail Customer” Information**

As noted in IGS Energy’s February 3, 2012 Verified Statement of Position, protecting the integrity of the competitive market and confidential customer information is vital to the success of municipal aggregation and is good for Illinois consumers. (*See* IGS Energy Statement of Position at 1-2.) On this point, the Commission should be concerned that the Proposed Order recommends adopting a definition of “Retail Customer” that could lead to problems and confusion in the marketplace, particularly for customers who have individually chosen to switch from bundled service provided by Commonwealth Edison Company (“ComEd”) to obtain their electric supply from an Alternative Retail Electric Supplier (“ARES”). It is imperative that

customers who have affirmatively chosen to switch to an ARES not have that decision revoked or interfered with in any way by ComEd, a Governmental Authority, or any other person or entity involved with the municipal aggregation process. If a customer has chosen to switch to an ARES, that customer's decision must be respected by all parties, including all parties associated with municipal aggregation, and nothing about the municipal aggregation process should change that switched customer's status as a customer who takes supply from its chosen ARES.

Illinois law does not indicate a preference between individual customer switching and customer switching by means of a municipal aggregation – customers are free to pursue either course (or neither) as they choose. Nor does the law indicate any manner in which an ARES is precluded from lawfully marketing its products or services in municipalities or other jurisdictions that are considering or have implemented an aggregation program. If a customer has chosen to contract individually with an ARES, it would be wholly inappropriate for that contract to be interfered with in any way as a result of municipal aggregation.

Further, it would be wholly inappropriate for that customer to receive inaccurate information relating to the effect of municipal aggregation on that customer's rights. Again, if a customer has chosen to switch to an ARES, that customer's decision must be respected by all parties, including all parties associated with municipal aggregation, and nothing about the municipal aggregation process should change that switched customer's status as a customer who takes supply from its chosen ARES. That customer ought not to have to take any action to remain a customer of its chosen ARES, and certainly ought not to participate in any "opt-out" process to maintain its chosen status as a customer of an ARES.

At a minimum, a switched customer must not be included in the list of customers whom a Governmental Authority considers to be eligible for municipal aggregation. Such switched

customers already have made an active, affirmative choice about their preferred supplier of electricity, and have entered into contracts to document that choice. Any interference in that contractual relationship by any party involved in a municipal aggregation is inappropriate and may constitute a violation of Illinois law. In any event, however, it is clear that potential customer confusion would result from any attempt to include such a customer in a municipal aggregation, so that clearly should not occur.

For the reasons stated, it would be inappropriate and unnecessary for information about switched customers to be included in the information provided by ComEd to a Governmental Authority that is considering a municipal aggregation. However, the transmission of such information from ComEd to the Governmental Authority appears to be the effect of the Proposed Order's decision regarding the term "Retail Customer." (See Proposed Order Section "B" at 8-14.) Accordingly, preferably the "Commission Analysis and Conclusions" portion of Section B of the Proposed Order should be stricken and replaced with the following language:

**PROPOSED REPLACEMENT LANGUAGE FOR "COMMISSION ANALYSIS  
AND CONCLUSIONS" IN SECTION B OF PROPOSED ORDER:**

[Delete existing text on pages 13-14 of Proposed Order and replace with the following]

Illinois law provides electric customers with various options in terms of how they obtain their supply of electricity. Among those options, a customer may individually choose to switch to an Alternative Retail Electric Supply ("ARES"), take supply service from the public utility serving its service territory, or – if a valid municipal aggregation program is in place for that customer – may take service from an ARES through a municipal aggregation program. Illinois law does not express any particular preference among these options and nor does the Commission – our role is to ensure fair and equitable rules, appropriate consumer protections, and an even playing field for all customers and market participants.

Accordingly, we are highly cognizant that although municipal aggregation provides a mechanism for customers to switch suppliers, that mechanism should in no way impinge upon the rights of customers who have already affirmatively chosen to switch to an ARES. Nor should the municipal aggregation process create confusion for those switched customers or create any situation in which such switched customers are threatened with being switched into the municipal aggregation load or have to "opt-out" of the municipal aggregation load. Those

switched customers have already exercised their right to switch suppliers as provided by the Public Utilities Act. That choice must be respected, and it would be inappropriate for anything in the municipal aggregation process to affect such switched customers' choices.

Accordingly, in our view, no valid purpose would be served by including customer information about customers who have already switched to an ARES in the information that is provided by ComEd to a Governmental Authority in the municipal aggregation process. Such information serves no valid purpose for Governmental Authority implementing municipal aggregation.

**ALTERNATIVE PROPOSED REPLACEMENT LANGUAGE TO BE ADDED TO THE  
“COMMISSION ANALYSIS AND CONCLUSIONS” IN SECTION B OF PROPOSED  
ORDER:**

[Add the following at the end of the “Commission Analysis and Conclusions”  
section on page 14 of the Proposed Order]

We recognize that the adoption of this definition of “Retail Customer” may result in the provision of customer information from ComEd to a Governmental Authority about customers who have already chosen to switch to an Alternative Retail Electric Supplier. The Commission emphasizes that although, as a matter of statutory definition, this information may be provided, that does not mean that such switched customers' rights should be interfered with as a result of any municipal aggregation activity.

Illinois law provides electric customers with various options in terms of how they obtain their supply of electricity. Among those options, a customer may individually choose to switch to an Alternative Retail Electric Supply (“ARES”), take supply service from the public utility serving its service territory, or – if a valid municipal aggregation program is in place for that customer – may take service from an ARES through a municipal aggregation program. Illinois law does not express any particular preference among these options and nor does the Commission – our role is to ensure fair and equitable rules, appropriate consumer protections, and an even playing field for all customers and market participants.

Accordingly, we are highly cognizant that although municipal aggregation provides a mechanism for customers to switch suppliers, that mechanism should in no way impinge upon the rights of customers who have already affirmatively chosen to switch to an ARES. Nor should the municipal aggregation process create confusion for those switched customers or create any situation in which such switched customers are threatened with being switched into the municipal aggregation load or have to “opt-out” of the municipal aggregation load. Those switched customers have already exercised their right to switch suppliers as provided by the Public Utilities Act. That choice must be respected, and it would be inappropriate for anything in the municipal aggregation process to affect such switched customers' choices.

For the reasons stated herein, IGS Energy respectfully requests that the Commission modify the Proposed Order consistent with the suggested replacement language, or alternatively, the Alternative Suggest Replacement Language contained herein.<sup>1</sup>

Respectfully submitted,

**INTERSTATE GAS SUPPLY, INC.**

By: /s/ Christopher J. Townsend  
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<sup>1</sup> Although it does not take formal exception on the point, IGS Energy notes that the Proposed Order does not appear to include a recitation of the filing of Position Statements by various parties, including IGS Energy, on February 3 and 6, 2012. IGS Energy respectfully suggests that inclusion of that information in the Proposed Order at page 2 would be an appropriate reflection of the complete record of filings in the instant proceeding.